

the report at least 10 days before the trial, and that once this has been done, the prosecution is under no duty to call the chemist to give evidence. He further submits that the absence of the chemist, in any case, was merely an irregularity curable under section 422 of the Criminal Procedure Code.

Both sides discussed *Chong Yik v. Public Prosecutor*⁽¹⁾ and *Ng Yee v. Public Prosecutor*⁽²⁾ which were appeals to the High Court.

In the first case, Storr J. held that non-supply of the report rendered it inadmissible in evidence amounting to an illegality not curable by section 422 of the Criminal Procedure Code, while in the second case, Mathews C.J. held that non-supply of the report was merely an irregularity curable by section 422 of the Criminal Procedure Code. With the utmost respect, I must confess that I feel somewhat uncomfortable in Mathews C.J.'s ruling in his judgment that the report was not inadmissible *per se*. I am inclined to agree with Storr J. that without section 399(i) of the Code, the report by itself would not be admissible in evidence as, if not for the provisions in the sub-section, the circumstances in which it could be admitted in evidence would be in accordance with section 32 of the Evidence Act, i.e. where the maker is dead or cannot be found etc., evidence in respect of which must be adduced. If the report could, indeed, be said to be admissible *per se*, then there would be no need to have section 399(i) at all. But without the section what Storr J. said stands out.

I am afraid I am not with the respondent in the submission that once the prosecution has supplied the chemist's report not less than 10 days before the trial as required by the sub-section, it can ignore a notice by the accused, and consequently by the court. In substance, the sub-section says that a report may be given in evidence in a trial unless the maker is required to attend as a witness by the court, or the accused if he gives 3 days notice, but, in any case, if the Public Prosecutor intends to use the report as evidence, he must supply a copy to the accused not less than 10 days before the trial. In my view, the proviso cannot be treated as a general exemption to the reservations expressed in the main provision. The words "in any case" appearing in the proviso are intended to subject the prosecution to the main provision, and that is, putting it shortly, the prosecution can only use the report as evidence if the court or the accused (who has to give notice) does not want to examine the maker of the report. Ordinarily, if the accused gives proper notice, the prosecution must call the maker of the report, and the prosecution must prove its case in the ordinary way.

The case here, however, presents an unusual situation. From the start of the trial both sides knew that the accused person had given notice that he required the chemist to give evidence but chose not to give any indication to the court that the notice had been given and that the chemist was not present. The court was unaware of the notice at the time. The prosecution might have been at fault for ignoring the notice. But it must be stressed that the duty to see that a trial is conducted in a proper and fair manner does not lie merely on the court and the prosecution

A but on the defence as well. Since the admission of the report would have affected the accused, it was, I would say, a matter for the defence to inform the court, particularly at the time when the report was about to be introduced as evidence, that it wanted the chemist to be called. The inaction or silence of the defence at this juncture can only be construed as a withdrawal or waiver of the notice and that it had no objection to the report being admitted. As far as I can see, in law, there is nothing to prevent the accused from withdrawing or waiving his notice at any time. For this reason, I am of the view that the learned President was right in not excluding the report when considering the case against the appellant.

B C Appeal against conviction is dismissed.

The appellant is young and a first offender. The amount of the drug recovered from him, I understand, is just enough for a smoke. The indications are that he was an addict and not a pusher. I set aside the sentence of imprisonment and, in its place, impose a fine of \$400 in default 4 months.

Order accordingly.

Solicitors: R.K. Menon & Co.

E LIM HOCK CHUAN v. LEMBAGA PENGURUS KERAJAAN TEMPATAN

[A.C.J. (Arulanandom J.) July 4, 1977]
[Penang — Civil Appeal No. 10 of 1975]

F Rating — Appeal — Assessment too high — Appeal precluded by section 7 of Rating Validation Enactment, 1976 — Municipal Ordinance (S.S. Cap. 133), ss. 62, 64(1), 68 — Rating Validation Enactment, 1976, ss. 3, 6 & 7.

The appellant, a house-owner, appealed against the decision of the respondent to amend the Assessment List under the provisions of section 64(1) of the Municipal Ordinance by increasing the annual value of the appellant's property. The appellant contended, *inter alia* that the proposed assessment was too high and the respondent had no jurisdiction to make the amendment under the said section 64(1).

G Held: dismissing the appeal, (1) in view of the provisions of sections 3, 6 and 7 of the Rating Validation Enactment 1976, however repugnant they might be because of their effect on past commissions or omissions by the Local Government authorities, the court had no alternative but to hold that an appeal against the assessment was precluded by the Enactment;

H (2) section 7 of the Act was all embracing and did not permit a challenge in the courts to any assessment imposed on any property in the State of Penang prior to the coming into force of the Enactment;

(3) in construing sections 6 and 7 the court was constrained to construe them to achieve the object of the said Enactment which was stated to be "to validate certain assessments and rates made or purporting to have been made under the provisions of the Municipal Ordinance (S.S. Cap. 133)."

Case referred to:-

I (1) *Engineering Industry Training Board v. Samuel, Talbot (Engineers), Ltd. & Anor.* [1969] 1 All E.R. 480, 482.

CIVIL APPEAL.

Lim Ewe Hock for the appellant.

Wong Sai Heng for the respondent.

Arulanandom J.: This was an appeal by the appellant, a house-owner, against the decision of the

Lembaga Pengurus Kerajaan Tempatan, Pulau Pinang, to amend the Assessment List under the provisions of section 64(1) of the Municipal Ordinance by increasing the annual value of premises No. 21-F, Rose Avenue, Penang (the property of the appellant) to \$4,712 with effect from the 16th day of May, 1974.

The grounds of appeal were:—

- (1) that the proposed assessment was too high;
- (2) that the proposed assessment was arbitrary and not based on what the premises can reasonably be let out for;
- (3) that the Lembaga Pengurus Kerajaan Tempatan has no jurisdiction to make the amendment under section 64;
- (4) that the Lembaga Pengurus Kerajaan Tempatan has no power to amend the assessment list with effect from the date as proposed in the notice.

The facts were agreed on and an agreed statement of facts as to how, when and where the assessment list was amended, was filed and put in as Exhibit A.

Various arguments were put forward to the court by counsel for the appellant to support his grounds of appeal, and various arguments were canvassed by counsel for the respondent to support the valuation of the Valuation Department but to my mind all these arguments can only be entertained if the provisions of the Rating Validation Enactment 1976 can be reconciled with them. Mr. Lim Ewe Hock, counsel for appellant, submits that this is only a Rating Validation law and the provisions of the Municipal Ordinance especially sections 62, 64, and 68 have not been repealed. He argues that a restricted meaning must be given to sections 6 and 7 of the Enactment.

Mr. Wong Sai Heng on the other hand argues that the purpose of the Enactment was to validate certain assessments and rates and that sections 6 and 7 of the Enactment should be construed to achieve the objects and purposes of the Enactment.

Sections 3, 6 and 7 of the *Rating Validation Enactment 1976* read as follows:—

"3.(1) Notwithstanding the provisions of sections 61 and 63 of the Ordinance, it shall be lawful for every local authority and every local authority is hereby empowered in the year 1976, to prepare assessment lists, impose, charge, collect and recover rates for the year 1976 in the manner provided in Part VII of the Ordinance.

(2) The local authority may prepare separate assessment lists in respect of different parts within the local authority area.

6. No assessment made and no rate imposed, levied or collected in any previous year in purported exercise of any of the powers conferred in Part VII of the Ordinance and no act done before the commencement of this Enactment by any local authority, officer or other person purporting to be in exercise of any powers conferred by the Ordinance and in furtherance or in consequence of the making of such assessment or the imposition, levying or collection of such rate, shall be deemed to be or to have been invalid, irrecoverable or unlawful by reason of the failure on the part of the local authority, officer or other person to comply with the provisions of the Ordinance.

7. No legal proceeding of any kind whatsoever shall lie, be instituted or maintained in any court against any local authority, officer or other person purporting to be in exercise of any powers conferred by the Ordinance and in furtherance or in consequence of the making of any assessment or any im-

position, charge, collection or recovery of rates for any year purporting to have been made in accordance with the provisions of the Ordinance prior to the commencement of this Enactment."

In view of these provisions of the Enactment, however repugnant they may be because of their effect on past commissions or omissions by the Local Government authorities, the court has no alternative but to hold that an appeal against the assessment is precluded by the Enactment. Section 7 especially is all embracing and does not permit a challenge in the courts to any assessment imposed on any property in the State of Penang prior to the coming into force of the Enactment.

In construing the meaning of sections 6 and 7 of the Enactment the court is constrained to construe them to achieve the object of the Enactment which is stated to be "to validate certain assessments and rates made or purporting to have been made under the provisions of the Municipal Ordinance (S.S. Cap. 133)."

I am fortified in my opinion that this is the correct approach for the interpretation of the Enactment by Lord Denning's M.R. dictum in the case *Engineering Industry Training Board v. Samuel, Talbot (Engineers), Ltd. & Anor.*⁽¹⁾ where he stated:

"But we no longer construe Acts of Parliament according to their literal meaning. We construe them according to their object and intent."

For the reasons given above, the appeal is dismissed. There will be no order as to costs as when the appeal was filed the court was entitled to consider the merits of the appeal. The appellant is out of count now purely because subsequent to his appeal retrospective legislation was enacted, which to use a common phrase, took the ground from under his feet. That being so, the appellant should not be mulcted in costs. The nature of this case and its outcome fully justify costs not following the event.

Appeal dismissed.

Solicitors: *Lim Ewe Hock; Presgrave & Matthews.*

DATUK PHUA CHENG LEONG & ORS. v. TAN KAH WICH & ORS.

[O.C.J. (Abdul Razak J.) July 11, 1978]

[Kuantan — Civil Suit No. 445 of 1977]

Societies — Constitution of society — Contractual effect of — Injunction restraining office bearers from carrying out their duties — Application to remove — Absence of fraud or misconduct.

The plaintiffs in this case sought a declaration to remove the injunction which the defendants had obtained to restrain the plaintiffs from acting as the office bearers of the Kuantan Kheng Chew Wooi Kun Society. The plaintiffs claimed that they were the legal President and Committee of the said society. On October 30, 1977 at its special meeting, the defendants passed a resolution to appoint themselves as office bearers of the society after the first plaintiff as President had declared the meeting closed. The plaintiff alleged that the defendants had thereby contravened articles 14, 28, 29 and 30 of the society.

The root cause of the dispute seemed to lie in the decision of the committee to erect an electrical sub-station in one of